



Decision

Matter of: VSE Corporation--Reconsideration and
Entitlement to Costs

File: B-258204.3; B-258204.4

Date: December 28, 1994

William W. Goodrich, Jr., Esq., Arent Fox Kintner Plotkin & Kahn, for the protester.
Ralph L. Kissick, Esq., Zuckert, Scoutt & Rasenberger, for Sverdrup Technology, Inc., an interested party.
Russell P. Spindler, Esq., Department of the Navy, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Decision dismissing protest based on agency corrective action is affirmed on reconsideration where there is no showing that prior decision contained errors of fact or law.
2. Request for declaration of entitlement to bid protest costs is denied where record shows that agency took reasonably prompt corrective action.

DECISION

VSE Corporation requests reconsideration of our September 26, 1994, dismissal of its protest against the actions of the Department of the Navy under request for proposals (RFP) No. N68936-93-R-0139, for engineering support services. VSE maintains that we improperly dismissed its protest as academic based on corrective action taken by the Navy. VSE also requests that we declare it to be entitled to the costs of filing and pursuing its protest, including attorneys' fees.

We affirm the dismissal and deny the request for costs.

VSE filed two protests challenging the elimination of its proposal from the competitive range for this procurement. According to VSE's first letter of protest, the agency had improperly evaluated both its cost and technical proposals. VSE's second protest letter alleged that the Navy had applied undisclosed evaluation criteria in reviewing the offerors' management proposals, and should have amended the

RFP to include these different criteria. VSE requested as relief that its proposal be included in the competitive range, that the RFP be amended to reflect the actual requirements for the management proposal, and that a new source selection authority (SSA) be appointed. This latter request for relief was based on VSE's position that the Navy's elimination of all but one of the proposals from the competitive range reflected bias on the part of the SSA in favor of the one firm remaining in the competition.

In response to VSE's protest, the Navy advised our Office that it would take corrective action by including VSE and all other offerors in the competitive range, and engage in discussions with those firms. We therefore dismissed VSE's protest as academic.

In its reconsideration request, VSE maintains that we improperly dismissed its protest because the corrective action did not address two of its allegations: (1) that the RFP as currently written does not reflect the agency's actual requirements in terms of the offerors' management proposals; and (2) bias on the part of the SSA. VSE maintains that the agency should amend the RFP to reflect its actual requirements and appoint a new SSA.

These arguments do not warrant changing our conclusion. VSE's allegations that the RFP does not reflect the agency's true needs and that the SSA is biased were based solely on VSE's interpretation of the results of the original evaluation. Moreover, these arguments were significant only to the extent that they allegedly affected the evaluation results, including the decision to eliminate VSE from the competitive range. Since the original evaluation no longer is valid in light of the corrective action--which will necessitate a new evaluation based on the discussions and revised proposals--there no longer is any current basis for VSE's allegations; the allegations have been rendered academic by the corrective action. To the extent VSE believes that the prior evaluation suggests that the agency will commit the same improprieties--i.e., bias and failure to apply the criteria as stated in the RFP--in the reevaluation, VSE is merely anticipating improper agency action. It is well-established that protests based on anticipated improper agency action are premature and will not be considered. Sea-Land Serv., Inc., B-246784.6; B-253068, Aug. 5, 1993, 93-2 CPD ¶ 84.

We also find that VSE is not entitled to reimbursement of the costs of filing and pursuing its protest. Under our Bid

¹The Navy advises, moreover, that the RFP as currently written in fact does reflect the agency's actual needs.

Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1994), we may declare a protester entitled to the costs of filing and pursuing its protest, including reasonable attorneys' fees, where the agency takes corrective action in response to a protest. We will only do so, however, where the record shows that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Atlas Powder Int'l, Ltd.--Entitlement to Costs, 73 Comp. Gen. 121 (1994) 94-1 CPD ¶ 278; Building Servs. Unltd., Inc. -- Entitlement to Costs, B-254323.3, Mar. 10, 1994, 94-1 CPD ¶ 190.

Here, the Navy took corrective action by the date on which it was required to file its agency report in our Office.² We consider this to have been reasonably prompt under the circumstances. See PLX, Inc.--Entitlement to Costs, B-251575.2, Mar. 10, 1993, 93-1 CPD ¶ 224 (agency corrective action, taken by report due date is considered reasonably prompt). Accordingly, we have no basis to find VSE entitled to its bid protest costs.

The dismissal is affirmed and the request for entitlement to costs is denied.

\s\ Paul Lieberman
for Robert P. Murphy
General Counsel

²Our Office granted the Navy a 3-day extension to file its report for VSE's first protest. Consequently, the agency's corrective action occurred on the 28th working day after the protest was filed. Nonetheless, the agency never filed a full report in our Office, and VSE was not required to file comments.